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PRE APPEAL BRIEF REQUEST FOR REVIEW

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) SEDN/302	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on August 3, 2006 <i>Signature</i> <u><i>Laura Crater</i></u> <i>Notice of Appeal - 2</i> <i>Pre-Appeal Brief Request - 1</i> <i>5 pages</i> Typed or printed Name <u>LAURA E. CRATER</u>		Application Number 09/922,242	Filed 08/03/2001
		First Named Inventor Goode	
		Art Unit 2612	Examiner Lu, Shirley
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s) 2-3 of 3. Note: No more than five (5) pages may be provided.</p>			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>39,414</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number _____		<i>E J Wall</i> Signature <u>EAMON J. WALL</u> Typed or printed name <u>732-530-9404</u> Telephone number <u>08/03/2006</u> Date	
<input checked="" type="checkbox"/> Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
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REASONS

The recent prosecution history of the instant patent application is as follows (the Preliminary Appeals Board is respectfully directed to review at least the below-mentioned Office Action responses):

A non-final Office Action was mailed December 21, 2005.

In response to the non-final Office Action, Applicant addressed objections pertaining to the adequacy of a priority document and the applicability of an alleged anticipatory reference and/or obviating reference(s).

A final Office Action was mailed May 3, 2006, essentially restating the objections and rejections of the preceding non-final Office Action.

In response to the final Office Action, Applicant timely replied within a two-month period and without claim amendments. Applicant's response to the final Office Action is summarized as follows:

In response to objections regarding support or enablement of the claims in a priority document, Applicants identify with specificity the particular portions of the priority document providing the allegedly missing support.

In response to the rejection of various claims under 35 USC 102, Applicant noted that at least two of the claim steps allegedly anticipated by the reference were simply not disclosed or suggested by the reference.

In response to the "Response to Arguments Section" of the Office Action (where the Examiner characterizes the reference and Applicant's prior arguments with respect to the reference), Applicant laid out several specific differences between the claimed invention and the cited reference which clearly indicate that the reference does not anticipate the claimed invention.

In response to the rejection of various claims under 35 USC 103, Applicant noted the deficiencies in the allegedly anticipating reference, which deficiencies are simply not shared by the operable addition of any other cited reference.

The Examiner provided an Advisory Action in which it was stated that:

"The request for consideration has been considered but does not place the application in condition for allowance because arguments reflect a different position, and may introduce a new interpretation of the claims and may be construed as raising new issues."

The position of the Examiner does not seem to be supportable. Specifically, Applicant does not understand how new issues can be raised in the absence of a claim

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amendment. The Examiner is improperly contending that a difference of position (either the Examiner's or Applicant's) introduces a "new interpretation" which somehow becomes a new issue such that prosecution should cease pending appeal or continuation.

In summary, in addition to disagreeing with the Examiner's position with respect to the art, Applicant also feels that the Advisory Action itself is inappropriate. Applicant believes that the appropriate course of action for the Examiner at this point is to issue a new, non-final Office Action if the Examiner believes that additional arguments against patentability are warranted. If the Examiner has additional art to be cited and/or argued, then this additional art and/or arguments are appropriately provided within a new Office Action.